

HOUSE BILL No. 6615

November 6, 2008, Introduced by Reps. Johnson, Tobocman, Jackson, Robert Jones, Valentine, Leland, Gonzales and Cushingberry and referred to the Committee on Banking and Financial Services.

A bill to require mortgage lenders and mortgage servicers to provide certain notices and information; to provide for the establishment of a program to prevent home foreclosures; to provide for the establishment of an information database; to provide for the powers and duties of certain state governmental officers and entities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "home
2 foreclosure prevention act".

3 Sec. 2. As used in this act:

4 (a) "Acts as a mortgage servicer" means engages, whether for
5 compensation or gain from another or on its own behalf, in the
6 business of receiving scheduled periodic payments from a borrower
7 pursuant to the terms of a mortgage loan, including money for an

1 escrow account, and paying principal, interest, and other payments
2 with respect to the money received from the borrower as is required
3 under the mortgage loan, mortgage servicing loan documents, or
4 servicing contract.

5 (b) "Commissioner" means the commissioner of the office of
6 financial and insurance regulation.

7 (c) "Mortgage lender" means a person engaged in the business
8 of making mortgage loans for compensation or gain and a mortgage
9 lender as that term is defined in section 1a of the mortgage
10 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL
11 445.1651a.

12 (d) "Mortgage loan" means a loan secured by a first or
13 subordinate mortgage of or a land contract for the purchase of real
14 property located in this state, used or improved for use as a
15 principal dwelling or primary residence, and designed for occupancy
16 by 4 or fewer families.

17 (e) "Mortgage servicer" means a person who directly or
18 indirectly acts as a mortgage servicer, who is a servicer, as that
19 term is defined in 12 USC 2605, with respect to mortgage loans, or
20 who is a mortgage servicer as that term is defined in section 1a of
21 the mortgage brokers, lenders, and servicers licensing act, 1987 PA
22 173, MCL 445.1651a.

23 (f) "Subprime loan" means a mortgage loan originated after
24 December 31, 2001 and before January 1, 2008 to which both of the
25 following apply:

26 (i) The difference between the annual percentage rate for the
27 loan and the yield on United States treasury securities with

1 comparable periods of maturity is either equal to or greater than 3
2 percentage points if the loan is secured by a first lien mortgage
3 or deed of trust or 5 percentage points if the loan is secured by a
4 subordinate lien mortgage or deed of trust. Without regard to
5 whether the loan is subject to or reportable under the home
6 mortgage disclosure act of 1975, 12 USC 2801 to 2811, the
7 difference between the annual percentage rate and the yield on
8 treasury securities with comparable periods of maturity shall be
9 determined using the same procedures and calculation methods
10 applicable to loans that are subject to the reporting requirements
11 of the home mortgage disclosure act of 1975, 12 USC 2801 to 2811,
12 with the yield on treasury securities being determined as of the
13 fifteenth day of the month before the application for the loan.

14 (ii) The difference between the annual percentage rate for the
15 loan and the conventional mortgage rate is either equal to or
16 greater than 1.75 percentage points if the loan is secured by a
17 first lien mortgage or deed of trust or 3.75 percentage points if
18 the loan is secured by a subordinate lien mortgage or deed of
19 trust. As used in this subparagraph, "conventional mortgage rate"
20 means the most recent daily contract interest rate on commitments
21 for fixed-rate first mortgages published by the board of governors
22 of the federal reserve system in the federal reserve statistical
23 release H.15, or a publication that supersedes that release, during
24 the week before the week in which the interest rate for the loan is
25 set.

26 Sec. 3. At least 45 days before filing a judicial foreclosure
27 action under chapter 31 of the revised judicature act of 1961, 1961

1 PA 236, MCL 600.3101 to 600.3185, or publishing a notice of
2 foreclosure by advertisement under section 3208 of the revised
3 judicature act of 1961, 1961 PA 236, MCL 600.3208, to foreclose a
4 mortgage on a primary residence that secures a subprime loan, the
5 mortgage servicer for the loan shall send written notice by mail to
6 the last known address of the borrower to inform the borrower of
7 the availability of resources to avoid foreclosure. The notice
8 shall include all of the following:

9 (a) An itemization of all past due amounts that cause the loan
10 to be in default.

11 (b) An itemization of any other charges that must be paid to
12 bring the loan current.

13 (c) The earliest date that proceedings to foreclose the
14 mortgage may be commenced.

15 (d) A statement that the borrower may have options available
16 other than foreclosure and that the borrower may discuss available
17 options with the mortgage lender, the mortgage servicer, or a
18 counselor approved by the United States department of housing and
19 urban development.

20 (e) The address, telephone number, and other contact
21 information for the mortgage lender, the mortgage servicer, or the
22 agent for either of them who is authorized to attempt to work with
23 the borrower to avoid foreclosure.

24 (f) The name, address, telephone number, and other contact
25 information for 1 or more counseling agencies approved by the
26 United States department of housing and urban development or the
27 Michigan state housing development authority operating to assist

1 borrowers in this state to avoid foreclosure.

2 (g) The address, telephone number, and other contact
3 information for the consumer complaint section of the office of
4 financial and insurance regulation.

5 Sec. 4. (1) Within 3 business days after mailing the notice
6 required by section 3, the mortgage servicer shall file information
7 with the state court administrative office. The filing shall be in
8 an electronic format as designated by the state court
9 administrative office and shall contain the name and address of the
10 borrower and the date the notice was mailed to the borrower.

11 (2) As permitted by applicable federal law and law of this
12 state, optional information may be requested from a mortgage
13 servicer to facilitate further review by the commissioner under the
14 Michigan home foreclosure prevention program established under
15 section 5. The nature of the optional information requested shall
16 be determined in connection with the design of the database under
17 subsection (3). The optional information shall be used by the
18 commissioner to prioritize efforts to reach borrowers most likely
19 to avoid foreclosure and to prevent delay for defaults where
20 foreclosure is unavoidable.

21 (3) By January 1, 2009, the state court administrative office
22 shall establish an internal database to track information required
23 to be provided under this section. The commissioner shall design
24 and develop this database, in consultation with the state court
25 administrative office, in a manner to promote the Michigan home
26 foreclosure prevention program established under section 5. Except
27 as provided in section 8(2), only the state court administrative

1 office and the commissioner or the commissioner's designee shall
2 have access to the database.

3 Sec. 5. (1) The commissioner shall establish the Michigan home
4 foreclosure prevention program to seek solutions to avoid
5 foreclosures for certain subprime loans. In developing the program,
6 the commissioner may seek input from any person, including housing
7 counselors approved by the United States department of housing and
8 urban development or the Michigan state housing development
9 authority, community organizations, state agencies, mortgage
10 lenders, and mortgage servicers.

11 (2) The Michigan home foreclosure prevention program
12 established under this section may provide for the mediation of
13 foreclosure proceedings.

14 Sec. 6. The commissioner shall review information provided in
15 the database created under section 4 to determine whether a
16 subprime loan is appropriate for efforts to avoid foreclosure. If
17 the commissioner reasonably believes, based on a full review of the
18 loan information, the mortgage servicer's loss mitigation efforts,
19 the borrower's capacity and interest in staying in the home, and
20 other appropriate factors, that efforts under the Michigan home
21 foreclosure prevention program established under section 5 will
22 offer a reasonable prospect to avoid foreclosure, the commissioner
23 may do 1 or both of the following:

24 (a) Extend the earliest date to commence proceedings to
25 foreclose the mortgage as contained in the notice under section 3
26 for not more than 90 days. If the commissioner extends the date
27 under this subdivision, the commissioner shall notify the borrower,

1 mortgage servicer, and state court administrative office.

2 (b) Issue an order under the Michigan home foreclosure
3 prevention program ordering the mortgage servicer and the borrower
4 to participate in mediation.

5 Sec. 7. Except as provided in section 8(2), the data provided
6 to the state court administrative office under section 4 shall be
7 used exclusively for the Michigan home foreclosure prevention
8 program developed under section 5. The information provided to the
9 database is not a public record and not subject to the freedom of
10 information act, 1976 PA 442, MCL 15.231 to 15.246, except that a
11 mortgage lender or mortgage servicer shall have access to the
12 information submitted with regard to the lender or servicer's own
13 loans. Provision of information to the state court administrative
14 office for use by the commissioner is not a violation of applicable
15 law.

16 Sec. 8. (1) Until the Michigan home foreclosure prevention
17 program developed under section 4 is discontinued, a complaint to
18 judicially foreclose a mortgage on a primary residence that secures
19 a subprime loan filed after, or a notice to foreclose a mortgage on
20 a primary residence that secures a subprime loan published after,
21 December 14, 2008 shall contain a certification by the filer or
22 publisher that all of the following are true:

23 (a) Notice was provided as required by section 3.

24 (b) Information was provided as required by section 4.

25 (c) The filing or publication date is on or after the earliest
26 date to commence proceedings to foreclose the mortgage as contained
27 in the notice under section 3 and, if applicable, as extended by

1 the commissioner under section 6.

2 (2) A clerk of the circuit court, sheriff, deputy sheriff,
3 undersheriff, or other judicial officer acting under chapter 31 of
4 the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to
5 600.3185, for judicial foreclosures or under section 3216 of the
6 revised judicature act of 1961, 1961 PA 236, MCL 600.3216, for
7 foreclosures by advertisement may access the database established
8 under section 4 to confirm a certification provided under
9 subsection (1).

10 (3) If a certification under subsection (1) in a complaint to
11 foreclose a mortgage contains a materially inaccurate statement,
12 the action may be dismissed without prejudice and the plaintiff
13 ordered to pay costs incurred by the defendant in defending the
14 action.

15 (4) If a certification under subsection (1) in a notice of
16 foreclosure by advertisement contains a materially inaccurate
17 statement, the sale of the property under section 3216 of the
18 revised judicature act of 1961, 1961 PA 236, MCL 600.3216, shall
19 not be conducted until the party attempting to foreclose by
20 advertisement has complied with this act.

21 Enacting section 1. This act does not take effect unless
22 Senate Bill No. ____ or House Bill No. 6614 (request no. 08197'08 **)
23 of the 94th Legislature is enacted into law.